

(b) Service under a contract approved by the Commission is deemed a separate and distinct class of service and the equipment used to fulfill the contract shall not be subject to car service limitations under 49 U.S.C. 11123.

(c) *Limitation of rail carrier rights to enter future contract.* The Commission may limit the right of a rail carrier to enter into future contracts if the Commission determines that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations under 49 U.S.C. 11101. The Commission will handle these determinations on a case-by-case basis and may investigate, either on its own initiative or upon the filing of a verified complaint by a shipper which demonstrates that it individually had been or will be harmed by a carrier's inability to fulfill its common carrier obligations as a result of existing contracts.

§ 1313.5 Remedies for breach of approved contracts.

(a) The exclusive remedy for an alleged breach of a contract approved by the Commission shall be an action in the appropriate State Court or United States District Court, unless the parties otherwise agree in the contract.

(b) The Commission may not require a rail carrier to violate the terms of a contract that has been approved under 49 CFR 1313.2, except to the extent necessary to comply with 49 U.S.C. 11128.

§ 1313.6 Limitation on equipment; and relief.

(a) A rail carrier may enter into contract for the transportation of agricultural commodities (including forest products but not including wood pulp, wood chips, pulpwood, or paper) that involve the use of carrier owned or leased equipment not in excess of 40 percent of the total number of the carrier's owned or leased equipment, by major car type, except as provided in paragraph (b) of this section.

(b) In the case of a proposed contract between a class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior 3-year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equipment used

on the average during the prior 3-year period may be used for the contract without prior Commission authorization.

(c) If the rail equipment standards of 49 U.S.C. 10713(k) are exceeded, prior relief must be obtained from the Commission and must be specifically identified in the contract summary.

(d) The Commission may grant relief from the limitations of paragraphs (a) and (b) of this section if:

(1) A rail carrier or other party requests such relief; or the Commission on its own initiative considers granting such relief; and

(2) The Commission determines that making additional equipment available does not impair the rail carrier's ability to meet its common carrier obligations under 49 U.S.C. 11101.

§ 1313.7 Contract filing, title pages, and numbering.

(a) *Filing of Rail Contracts.* (1) Rail carriers providing transportation subject to Subchapter I of Chapter 105 of Title 49, United States Code, must file with the Commission an original contract (or amendment) entered into with one or more purchasers of rail service. The contract (or amendment) must be accompanied by three copies of a contract summary (or amended contract summary) of the non-confidential elements of the contract as specified in §§ 1313.10, 1313.11, 1313.12, or 1313.13. The contract (or amendment) must also be accompanied by the appropriate filing fee (see 49 CFR part 1002).

(2) A contract (or amendment) and contract summary (or amended contract summary) may be rejected for noncompliance with applicable statutes and regulations.

(3) Contracts and contract summaries must not be filed in the same package with standard tariff filings.

(4) The confidential contract shall not be attached to the contract summary.

(5) The outside envelope or wrapper containing the contract/contract amendment and summary must be prominently marked "Confidential, Rail Contract" and addressed to: Interstate Commerce Commission, Section of Tariffs, Washington, DC 20423.